

FILED
MISSOULA, MT
2006 JUL 31 PM 12 48
PATRICK E. DUFFY
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ANTHONY SEREDUCK,)	CV-05-168-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
EDUARDO GUTIERREZ-FALLA,)	
EDWARD J. CORRIGAN, and TED O.)	
LYMPUS,)	
)	
Defendants.)	
_____)	

On May 24, 2006, United States Magistrate Judge Leif B. Erickson filed Findings and Recommendation in this matter. Plaintiff timely objected on June 15, 2006. Plaintiff is therefore entitled to de novo review of the record. 28 U.S.C. § 636(b)(1).

Judge Erickson engaged in preliminary screening of

Sereduck's Complaint pursuant to 28 U.S.C. § 1915A and recommends dismissal. In his Complaint, Sereduck alleges that his defense counsel, the prosecutor, and the Judge in his case engaged in various improper acts, all of which would, if proven, imply that his conviction was invalid. Judge Erickson found that Sereduck's claims could not be brought under 42 U.S.C. § 1983 because he had not shown that his conviction and/or sentence had already been invalidated. See Heck v. Humphrey, 512 U.S. 477 (1994).

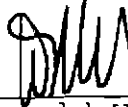
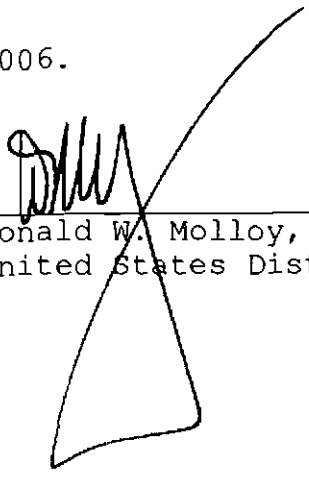
Upon de novo review, I agree that Sereduck's claims are not proper under 42 U.S.C. § 1983. It is clear that Sereduck has been unable to invalidate his sentence or conviction, and thus his Complaint fails to state a claim upon which relief can be granted. Sereduck acknowledges the same in his objection to the Findings and Recommendation. This Court will not hold Sereduck's § 1983 Complaint pending decision under federal habeas review. No prejudice will result from this dismissal since the statute of limitations will only begin to run at the time Sereduck's conviction is overturned or otherwise invalidated. Sereduck may then re-file his Complaint.

Based on the foregoing, IT IS HEREBY ORDERED that:

1. The Findings and Recommendation (dkt # 10) is adopted in full.
2. Plaintiff's Complaint (dkt #1) is DISMISSED WITH PREJUDICE for failure to state a claim upon which relief can be granted. This dismissal counts as a strike with regard to the Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

3. All pending motions are denied.

DATED this 31st day of July, 2006.

Donald W. Molloy, Chief Judge
United States District Court